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EXAMINER

STEVENS, THOMAS H

ART UNIT PAPER NUMBER

2123

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/938,966

Applicant(s)

AUPPERLE ET AL.

Examiner

Thomas H. Stevens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 8 22 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-42 were examined.

#### ***Response to Applicants' Arguments (1<sup>st</sup> Office Action)***

##### ***Hyperlinks***

2. The Office acknowledges applicants' amendment. Objection is withdrawn.

#### ***Information Disclosure Statement***

3. Examiner acknowledges applicants' response.

##### ***102(b)***

4. Applicants are thanked for addressing this issue. Applicants state the prior art doesn't disclose or suggest identifying at least one functional characteristic (claim 1). The phrase "functional characteristic" apparently, has several loosely defined terms:

- pg. 3-4, lines 27 to 1-5 respectively, *"functional characteristics of the web sites, e.g., the type of browser plug in modules utilize by the web page comprising a web site"*;
- pg. 4, lines 20-21, *"security zones" having different functional characteristics, such as disabling plug-ins, or disabling a particular active scripting language"*;
- pg. 6, lines 10-15, *"functional characteristics" is what is meant the functions supported by the web sites that require functions to be enabled by the user client devices in order to output the content of the web site on the client device and /or receive input from the client devices directed to the web site"*;

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- pg. 10, lines 4-12: *"The functional characteristics may be provided by web application software on **the servers hosting** the web site itself, middleware or platform software on the servers) hosting the web site, third party web sites, plug-in modules to the servers) hosting the web site, data sent from the servers) hosting the web site to one or more of a **browser function**, runtime environment, interpreter, compiler, browser plug-in module, **platform function**, dynamic link library (DLL), **operating system**, **application program**, etc. resident on a client computer, and the like."*

Based on the latter statements from sections of the specification, the Office interprets a functional characteristic that entails the source code of the web browser (e.g., HTML) for a web page (Welter: column 5, lines 5-6). Applicants state the prior art, based on claim 1, doesn't "teach any sort of identifying in the cited section" (applicants' remarks: pg. 17, second paragraph). Examiner refutes this statement as inherent considering the nature of detail and preciseness of program code to properly execute a plurality of events. Same argument applies to "testing the content of a web site for the presence of a functional characteristic" (applicants' remarks: pg. 17, 5<sup>th</sup> paragraph, lines 6).

Applicants' argue the prior art does not teach a search request (pg. 17, last paragraph). Examiner argues the point of the individual or user act of signing in the to the computer device by computer via a password (column 6, lines 25-31) to initiate the test. Furthermore, examiner is unclear to applicants' point since

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a user, inherently, would want to conduct a search in the first place (pg. 19, 5<sup>th</sup> paragraph, line 6).

By applicants' definition of functional characteristic, the prior art does disclose web site function characteristic (pg. 19, 3<sup>rd</sup> paragraph) since, by nature of the art, web sites must have a server (column 1, lines 29-31) which is a type of database (column 3, lines 7-10); the latter point is to also negate applicants' argument on pg. 20. Additionally, applicants admitted that the prior art suggests the step of the search event (pg.19 of applicants' arguments). Furthermore, examiner states that if a search is requested then the device is bound to receive one (pg.20, lines 6-8).

Applicants state the prior art does not disclose nor teach a particular functional characteristic. Claim 18 of the prior art's claim 16 states *generating one or more error reports for reporting one or more detected errors, if any*. Furthermore, based on the functional characteristic's broad definition, a configuration file is part of the **platform function**, (applicants' remarks: pg. 21).

Since a line of code is a functional characteristic, applicants have admitted the disclosure of the prior art (applicants' remarks: pg. 22 and 23).

Rejection stands.

**103(a)**

5. Applicants are thanked for addressing this issue. Respectfully, examiner is well aware of the procedures to establish *prima facie* reasoning. Applicant's arguments filed 6/8/05 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the

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references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, a business would profit by charging fees for validating client web sites.

In response to applicant's argument that 6/8/05 the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

## ***Section II: Final Rejection***

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology

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Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-32 and 34-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Welter et al., (U.S. Patent 6,631,408 (2003)). Welter et al., teaches a method for testing web sites (abstract).

Claim 1. A computer implemented method of identifying web sites (column 2, lines 26-36) comprising: identifying at least one functional characteristic to be tested (column 2, lines 37-47); retrieving content for a web site (column 4, lines 44-60); testing the content of the web site for the presence of the at least one functional characteristic (column 2, lines 26-36); and storing results of the testing of the content of the web site (column 2, lines 26-36).

Claim 2. The computer implemented method of claim 1, (column 2, lines 26-47) wherein the at least one functional characteristic identifies a functional characteristic of web sites that requires a function to be enabled by a client device (column 2, lines 49-57) in order to output the web site content on the client device.

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Claim 3. The computer implemented method of claim 1(column 2, lines 26-47) further comprising: disabling, in a web browser (column 6, lines 21-25), the at least one functional characteristic prior to retrieving the content for the web site (column 6, lines 33-47).

Claim 4. The computer implemented method of claim 3, (column 2, lines 26-47; column 6, lines 33-47) wherein testing the content of the web site for the presence of the at least one functional characteristic comprises determining if a portion of the content not one functional output by the web browser due to the at least characteristic being disabled (examiner interprets this part as a warning if POST data has errors: column 3, lines 21-36).

Claim 5. The computer implemented method of claim 1, (column 2, lines 26-47) wherein storing the results of the testing comprises generating an entry in a web site functional characteristics database based on the results of the testing (column 2, lines 49-57).

Claim 6. The computer implemented method of claim 1, (column 2, lines 26-47) wherein the at least one functional characteristic comprises at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies (columns 7-8, lines 64-67 and 1-3) on a client device, providing dynamic web page content, providing dynamic user interfaces, displaying digital movies,



and broadcasting audio data (column 6, lines 15-20).

Claim 7. The computer-implemented method of claim 1, (column 2, lines 26-47) wherein retrieving content for the web site comprises generating a list of web sites to be tested, and selecting a next web site in the list of web sites to be tested (column 6, lines 60-67).

Claim 8. The computer implemented method of claim 7, (column 2, lines 26-47; column 6, lines 60-67) wherein identifying at least one functional characteristic to be tested comprises generating a list of functional characteristics to be tested (column 6, lines 15-20), and selecting a next functional characteristic in the list of functional characteristics to be tested.

Claim 9. The computer implemented method of claim 8, (column 2, lines 26-47; column 6, lines 60-67; column 6, lines 15-20) wherein testing the content of the web site for the presence of the at least one functional characteristic comprises for each web site in the list of web site, testing each functional characteristic in the list of functional characteristics.

Claim 10. The computer implemented method of claim 5 (column 2, lines 26-47; column 2, lines 49-57) further comprising: receiving a search request including a designation of one or more web site functional characteristics (column 6, lines 60-65 and column 5, lines 25-30); searching the web site functional

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characteristics database based on the search request (column 6, lines 11-20); and returning results of searching the web site functional characteristics database to thereby identify zero or more web sites having or not having the designated one or more web site functional characteristics (column 6, lines 60-65 and column 5, lines 25-30).

Claim 11. A computer program product, comprising: computer usable program code for identifying at least one functional characteristic to be tested (column 6, lines 16); computer usable program code (column 6, line 11) for retrieving content for a web site; computer usable program code for testing the content of the web site (column 4, lines 50-53) for the presence of the at least one functional characteristic (column 6, line 16); and computer usable program code for storing the results of the testing of the content of the web site (column 3, lines 5-10).

Claim 12. The computer program product of claim 11, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the at least one functional characteristic identifies a functional characteristic of web sites that requires a function to be enabled a client device (column 2, lines 49-57) in order to output the web site content on the client device.

Claim 13. The computer program product of claim 11 (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) further

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comprising: computer usable program code for disabling, in a web browser, the at least one functional characteristic prior to retrieving the content for the web site (column 6, lines 33-47).

Claim 14. The computer program product of claim 11(column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the computer usable program code for testing the content of the web site for the presence of the at least one functional characteristic include computer usable program code for determining a portion of the content is not output by the web browser due to the at least one functional characteristic being disabled (examiner interprets this part as a warning if POST data has errors: column 3, lines 21-36).

Claim 15. The computer program product of claim 11(column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the fourth computer usable program code for storing the results of the testing include computer usable program code for generating an entry (column 8, lines 44-67 with figure 8) in a web site functional characteristics database based on the results of the testing.

Claim 16. The computer program product of claim 11, (column 2, lines 26-47) wherein the at least one functional characteristic comprises at least one of use active scripting, a type of active scripting used, a plug-in application used, the use forms, storing of cookies (columns 7-8, lines 64-67 and 1-3) on a client

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device, providing dynamic web page content, providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, lines 15-20).

Claim 17. The computer program product of claim 11(column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the computer usable program code for retrieving content for the web site include computer usable program code for generating a list of web sites to be tested (column 8, lines 44-67 with figure 8), and computer usable program code for selecting a next web site in the (column 6, lines 60-67) list of web sites to be tested.

Claim 18. The computer program product of claim 17, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10; column 8, lines 44-67 with figure 8; column 6, lines 60-67) wherein the computer usable program code for identifying at least one functional characteristic to be tested include computer usable program code for generating a list of functional characteristics to be tested, (column 8, lines 44-67 with figure 8) and computer usable program code for selecting a next functional characteristic in the list of functional characteristics (column 6, line16) to be tested.

Claim 19. The computer program product of claim 18, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10; column 8, lines 44-67 with figure 8; column 6, lines 60-67; column 8, lines 44-67 with figure 8)

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wherein the computer usable program code for testing the content of the web site for the presence of the at least one functional characteristic computer usable program code for testing each functional characteristic in the list of functional characteristics for each web site in the list of web sites (column 6, lines 60-67).

Claim 20. The computer program product of claim 11(column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) is, further comprising: fifth computer usable program code for receiving a search request (column 6, line 16) including a designation of one or more web site functional characteristics (column 6, lines 60-67); computer usable program code for searching the web site functional characteristics database based on the search request (column 6, line 16); and computer usable program code for returning results of searching the web site functional characteristics database to thereby identify zero or more web sites having or not having the designated one or more web site functional characteristics (column 6, lines 60-65 and column 5,lines 25-30).

Claim 21. An apparatus for identifying web sites, comprising: a network interface (column 1, lines 10-15); database interface (column 2, lines 33-35); and a web site content analysis engine coupled to the network interface and the database interface, wherein the web site content analysis engine identifies at least one functional characteristic to be tested (column 2, lines 38-47), retrieves content for

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a web site via the network interface, tests the content of the web site for the presence of the at least one functional characteristic (column 6, line 15), and stores the results of the testing of the content of the web site via the database interface.

Claim 22. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the at least one functional characteristic identifies a functional characteristic of web sites that requires a function to be enabled by a client device (column 2, lines 49-57) order to output the web site content on the client device.

Claim 23. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine disables, in a web browser, the at least one functional characteristic prior to retrieving the content for the web site (column 6, lines 33-47).

Claim 24. The apparatus claim 23, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 6, lines 33-47) wherein the web site content analysis engine tests the content of the web site the presence of the at least one functional characteristic by determining if a portion of the content is not output by the

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web browser due to the least one functional characteristic being disabled (examiner interprets this part as a warning if POST data has errors: column 3, lines 21-36).

Claim 25. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine stores the results the testing by generating an entry (column 8, lines 44-67 with figure 8) in a web site functional characteristics database based on the results of the testing.

Claim 26. The apparatus of claim 21, (column 2, lines 26-47) wherein the at least one functional characteristic comprises at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies on a client device (columns 7-8, lines 64-67 and 1-3), providing dynamic web page content, providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, lines 15-20).

Claim 27. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine retrieves content for the web site by generating a list of web sites to be tested, (column 8, lines 44-67 with figure 8) and selecting a next web site in the (column 6, lines 60-67) list of web sites to be tested.

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Claim 28. The apparatus of claim 27, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 8, lines 44-67; with figure 8; column 6, lines 60-67) wherein the web site content analysis engine identifies (column 4, lines 45-55) at least one functional characteristic to be tested by generating a list of functional characteristics to be tested, and selecting a next functional characteristic in the list of functional characteristics (column 6, line 16) to be tested.

Claim 29. The apparatus of claim 28, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 8, lines 44-67; with figure 8; column 6, lines 60-67) wherein the web site content analysis engine tests the content of the web site for the presence of the at least one functional characteristic by, for each web site in the list of web site, testing each functional characteristic in the list of functional characteristics (column 6, line 16).

Claim 30. The apparatus of claim 25, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 8, lines 44-67 with figure 8) further comprising: a search engine coupled to the search request input interface generation device and the search results interface generation device, wherein the search engine receives a search request including a designation of one or more web site functional characteristics (column 6, lines 10-20), searches the web site functional characteristics database based on the search request, and



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returns results of searching the web site (column 3, lines 5-10)functional characteristics database to thereby identify zero or more web sites having or not having the designated one or more web site functional characteristics (column 6, line 16 and lines 60-67).

Claim 31. A method of identifying web sites (column 5, lines 25-33), comprising: receiving a search request including a designation of one or more web site functional characteristics; searching a web site functional characteristics database (column 6, line 16 and column 5, lines 5-10) based on the search request; and returning results of searching the web site functional characteristics database to thereby identify zero or more web sites having or not having the designated one or more web site functional characteristics (column 6, line 16 and 60-67).

Claim 32. The computer-implemented method of claim 31, (column 5, lines 25-33; column 6, line 16 and column 5, lines 5-10; column 6, line 16 and 60-67) wherein the one or more web site functional characteristics identify functions that are enabled on a client device web browser in order to output (column 8, lines 4-15) the web site content on the client device.

Claim 34. The computer-implemented method of claim 31, (column 5, lines 25-33; column 6, line 16 and column 5, lines 5-10; column 6, line 16 and 60-67)

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wherein the one or more web site functional characteristics include at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies (column 7, lines 60-67) on a client device, providing dynamic web page content (column 3, line 14), providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, line 16).

Claim 35. A data structure having entries corresponding to web sites for use by a computing device to identify web sites (column 3, lines 1-25) based on functional characteristics, each entry comprising: web site identifier field for identifying a web site (column 6, lines 59-65); and one or more functional characteristic fields for identifying functional characteristics of the web site identified in the web site identifier field (column 7, lines 9-18 with figure 5).

Claim 36. The data structure of claim 35, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5) wherein the functional characteristics identify functions that are enabled on a client device (column 1, lines 40-51 with figure 1) web browser in order to output the web site content on the client device.

Claim 37. The data structure of claim 35, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5) wherein the functional characteristics include at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies on a client

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device, providing dynamic web page content (column 3, line 14), providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, line 16).

Claim 38. The data structure of claim 35, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5) wherein the data structure is stored on a computer usable medium (column 4, lines 4-17 with figure 2).

Claim 39. The data structure claim 38, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5; column 4, lines 4-17 with figure 2) wherein the computer usable medium is part of a network attached storage unit (column 1, lines 10-15; column 3, lines 5-10).

Claim 40. The computer-implemented method of claim 1, (column 2, lines 26-47) wherein the results of the testing of the content of the web site are stored in a network attached storage unit (column 1, lines 10-15; column 3, lines 5-10).

Claim 41. The computer program product of claim 11, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the computer usable program code for storing the results the testing the content of the web site comprises computer usable program code for storing the results of the testing in a network attached storage unit (column 3, lines 5-10).

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Claim 42. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine stores the results of the testing of the web site in a database stored on a network attached storage unit (column 1, lines 10-20 with column 3, lines 10-20).

***Claim Rejections - 35 USC § 103***

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 33 is rejected under 35 U.S.C. 103 (a) as unpatentable by Welter et al., (U.S. 6,631,408 (2003)). in view of Scarlat et al., (U.S. 6,477,483 (2002)).

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Welter et al., teaches testing multiple web sites but doesn't teach charge a fee.

Scarlat et al. teaches methods for testing the operation of web-based and other transactional servers.

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify Welter et al. by way of Scarlat et al., since a company may not have the time or other resources needed to set up, run and analyze the results of a load test prior to launch (Scarlat: Background section, last paragraph).

Claim 33. The computer-implemented method of claim 31, (Welter: column 5, lines 25-33; column 6, line 16 and column 5, lines 5-10; column 6, line 16 and 60-67) further comprising: charging a fee to an account of a source (Scarlat: column 5, lines 26-39) of the search request searching the web site functional characteristics database based on the search request (Welter: column 6, lines 10-12).

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

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action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tom Stevens whose telephone number is 571-272-3715, Monday-Friday (8:00 am- 4:30 pm) or contact Supervisor Mr. Leo Picard at (571) 272-3749. Central Fax number is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

August 2, 2005

  
Paul L. Rodriguez 8/3/05  
Primary Examiner  
Art Unit 2125

THS